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FM USDEL SALT TWO GENEVA

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E.O. 11652: XGDS-1

TAGS: PARM

SUBJECT: ARTICLE XVII, 3 OF J.D.T. (SALT TWO-714)

REF: STATE 170798, STATE 176114

1. DELEGATION RECOMMENDS THAT U.S. LANGUAGE FOR PARAGRAPH 3 OF ARTICLE XVII CONTAINED IN REFTELS BE REVISED TO READ AS FOLLOWS:

"EACH PARTY UNDERTAKES NOT TO USE ANY MEASURE OR PRACTICE WHICH DELIBERATELY IMPEDES VERIFICATION BY NATIONAL TECHNICAL MEANS OF COMPLIANCE WITH THE PROVISIONS OF THIS AGREEMENT. THIS OBLIGATION SHALL NOT REQUIRE CHANGES IN CURRENT CONSTRUCTION, ASSEMBLY, CONVERSION, OR OVERHAUL PRACTICES. EACH PARTY SHALL EXERCISE ITS BEST EFFORTS TO AVOID MEASURES AND PRACTICES WHICH RESULT IN UNINTENTIONALLY IMPEDING VERIFICATION BY NATIONAL TECHNICAL MEANS OF COMPLIANCE WITH THE PROVISIONS OF THIS AGREEMENT."

2. THE FOLLOWING AGREED STATEMENT WOULD BE PRESENTED TO THE SOVIETS AS AN INTEGRAL AND INSEPARABLE PART OF THE U.S. PROPOSAL: "THE PARTIES UNDERSTAND THAT THE WORDS "ANY MEASURE OR PRACTICE WHICH DELIBERATELY IMPEDES VERIFICATION" IN PARAGRAPH 3 OF ARTICLE XVII INCLUDE ANY ACTIVITY WHICH IS CARRIED OUT DELIBERATELY TO HIDE, DISGUISE, OR OTHERWISE HINDER THE COLLECTION OF ANY DATA, INCLUDING TESTING AND DEVELOPMENT DATA, REQUIRED FOR VERIFICATION BY NATIONAL TECHNICAL MEANS OF COMPLIANCE WITH THE PROVISIONS OF THIS AGREEMENT."

3. THE REVISED PROVISION IS IDENTICAL TO THAT OF REFTELS EXCEPT THAT PHRASE, "INCLUDING MEASURES AND PRACTICES ASSOCIATED WITH TESTING AND DEVELOPMENT," HAS BEEN DELETED FROM FIRST SENTENCE, AND INCLUDED IN AGREED STATEMENT, AGREED STATEMENT, IN OUR VIEW, FULLY DESCRIBES THE SCOPE OF THE OBLIGATION

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State Dept. review completed

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4. DELEGATION BELIEVES THAT APPROACH RECOMMENDED HERE IS
PREFERABLE TO LANGUAGE TO REFTELS FOR FOLLOWING REASONS:A. RECOMMENDED APPROACH TAKES ADVANTAGE OF INFORMAL
BUT REPEATED STATEMENT BY SHCHUKIN (SEE SALT TWO-707,
MEMCON A-930) TO DEFINE MORE SPECIFICALLY THE ACTIVITIES TO BE
PROHIBITED.B. RECOMMENDED LANGUAGE FOR PARAGRAPH THREE OF
ARTICLE XVII MOVES CLOSER TO SOVIET LANGUAGE FOR FIRST SENTENCE.
SOVIETS MAY WELL CONTINUE TO OPPOSE "PRACTICES" IN FIRST SENTENCE,
IN VIEW OF SHCHUKIN'S INTERPRETATION THAT "PRACTICES" (PORYADOK
RABOT) MEANS THE NORMAL WAYS IN WHICH WORK IS CARRIED OUT
(LITERALLY "ORDER OF WORK"), WHEREAS (MEASURES (MERY)
MEANS, IN THE CONTEXT OF THE PROVISION, ACTIONS SPECIFICALLY TAKEN
FOR THE PURPOSE OF IMPEDING VERIFICATION BY NTM. (SEE SALT
TWO-692, 697, MEMCONS A-914, 922). IF SOVIETS DO CONTINUE
TO OPPOSE "PRACTICES" IN FIRST SENTENCE, DELEGATION CONTEMPLATES
END POSITION IN WHICH SOVIET LANGUAGE FOR FIRST SENTENCE IS
ACCEPTED BY U.S. IN EXCHANGE FOR SOVIET ACCEPTANCE
OF AN EQUIVALENT AGREED STATEMENT. SUCH A RESULT WOULD BE EQUALLY
EFFECTIVE IN TERMS OF MAKING OBLIGATION CLEAR AND BINDING. IT
COULD ALSO PROVIDE A BASIS FOR U.S. TO ARGUE APPLICABILITY OF THE
AGREED STATEMENT TO BOTH INTERIM AGREEMENT AND ABM TREATY.C. AN ADDITIONAL POINT IS THAT IF "TESTING" IS EXPLICITLY
CITED IN FIRST SENTENCE OF PARAGRAPH 3 OF ARTICLE XVII AS IN
REFTEL LANGUAGE, SOVIETS MAY INSIST ON ITS ADDITION TO SECOND
SENTENCE, THEREBY PERMITTING THEM TO ARGUE THAT CURRENT TESTING
PRACTICES SHOULD BE EXEMPTED FROM THE OBLIGATION NOT TO IMPEDE
VERIFICATION.5. CONSIDERATIONS DISCUSSED ABOVE DO NOT INFLUENCE THIRD SENTENCE
OF U.S. PROPOSAL, WHICH WOULD REMAIN PART OF ANY OF THESE PACKAGES.
JOHNSON

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